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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.85 of 2006

The Commissioner of Income Tax
Tamil Nadu-VII,
madras .. Appellant

Vs.

M/s.Print Systems & Products,
No.46, TTK Road,
Chennai-600 018 .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 27.3.2002 in ITA No.1279/Mds/93 for the assessment year 1988-89 (ITA No.90/91-92/SR.VII dated 27.1.1993 on the file of the Commissioner of Income Tax (Appeals) VII, Chennai-34 against PAN/GIR No.47-064-FN-1289 dated 27.3.1991 on the file of the Deputy Commissioner of Income Tax, Special Range VII, Chennai)

For Appellant : Mr.J.Naresh Kumar

J U D G M E N T

(Delivered by P.P.S.JANARTHANA RAJA, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1279/Mds/93 dated 27.3.2002 raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in deleting the addition in respect of commission paid to sister concern under Section 40A(2) of the Income Tax Act, even though it is unreasonable and excessive?.

2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in granting 100% depreciation on addition of temporary erections, even though the

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property was acquired by the assessee and not taken on lease, the temporary erection to be treated as capital expenditure in computing the Income of the assessee.?"

2. The facts in nutshell are as under: The assessment year involved in this appeal is 1988-89 and the corresponding accounting year ended on 31.3.1988. The assessee is a registered firm consisting of three partners. The assessee filed return of income on 24.2.1989 admitting an income of Rs.19,42,330/-. The assessment was completed under Section 143 (3) and the total income was determined at Rs.34,74,150/-. While completing the assessment, the assessing officer disallowed the commission amount of Rs.2,00,000/- paid to M/s.Nippon Enterprises (South), a sister concern, and also disallowed the claim towards depreciation at 100% of Rs.4,50,815/- in respect of addition of temporary erection. Aggrieved by the said order, the assessee filed appeal to the appellate Commissioner of Income Tax. The Commissioner of Income Tax(appeals) allowed the appeal. Aggrieved by that order, the Revenue filed appeal before the Appellate Tribunal. The Appellate Tribunal, following its earlier orders, dismissed the departmental appeal.

3. The learned Senior Standing counsel submitted that the Tribunal was wrong in deleting the addition made by the assessing officer with reference to the provisions of Section 40A(2) of commission payment to the sister concern. Further it is stated that the assessee paid the commission to its sister concern, which was unreasonable and excessive. The learned counsel also submitted that the temporary erection would have to be treated as a Revenue expenditure and the Tribunal was wrong in granting 100% depreciation.

4. We have heard the learned Senior Standing counsel for the appellant.

5. The findings given by the Tribunal were based on the records and evidence. The Tribunal, after considering the relevant materials came to the conclusion that the commission payment was not found to be unreasonable and further found that the commission payment when compared with the commission offered by the other assessee in similar business at 5% could not be said to be excessive. No further evidence or material was produced by the Revenue that the order of the Tribunal is unreasonable and unjust.

6. In respect of the second question, the Tribunal has given finding that the assessee had made temporary partitions, false ceiling and given the walls a coat of paint. The only objection of the Revenue was that since the property was acquired by the assessee and not taken on lease, the temporary erection would have to be treated as Revenue expenditure. The Revenue is not in a position to point out any Rule or Section to substantiate its claim that the assessee is not entitled to 100% depreciation on temporary erection. The ownership or taking the property

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on lease is of no consequence, so far as construction of a temporary partition are concerned. So, the Tribunal, considering the relevant materials and evidence, came to the conclusion that the assessee was entitled to 100% depreciation in respect of the addition on temporary erection. This view has also been taken by the Tribunal in respect of the earlier assessment orders.

7. In view of the foregoing conclusion, we do not find any error or infirmity in the order of the Tribunal and hence, the same does not warrant any interference and no substantial questions of law arise for consideration of this Court. Hence, we dismiss the above tax case. No costs.

msk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-90.

2. The Commissioner of Income Tax,
Tamilnadu-VII, Chennai.

3. The Commissioner of Income Tax (Appeals) VII,
Chennai-34.

4. The Deputy Commissioner of Income Tax,
Special Range, VII, Chennai.

1 cc To Mr.Pushya Sitaraman, Senior Standing Counsel
for IT, SR.8102.

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JRG(CO)
RVL 17.03.2006

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